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PATENT  
Attorney Docket No. 10791.0001-00-000

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: )  
)  
Richard S. Belliveau ) Group Art Unit: 2875  
)  
Application No.: 10/801,177 ) Examiner: Lee, Y MY Quach  
)  
Filed: March 15, 2004 )  
)  
For: Lighting Devices Using a Plurality )  
of Light Sources )

**Mail Stop Appeal Brief--Patents**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)**

Transmitted herewith is the APPEAL BRIEF in this application with respect to the  
Notice of Appeal filed on July 1, 2008.

This application is on behalf of

☒ Small Entity      ☐ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☒ \$255.00 (Small Entity)

☐ \$510.00 (Large Entity)

**TOTAL FEE DUE:**

Appeal Brief Fee      \$255.00

Extension Fee (if any)      \$N/A

Total Fee Due      \$255.00

☒ The fee total of \$255.00 is submitted herewith.



PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to Deposit Account 06-0916.

FINNEGAN, HENDERSON, FARABOW,  
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Dated: July 21, 2008

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Docket No. 10791.0001-00

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**BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re Richard S. Belliveau  
(Reissue Application No. 10/801,177)

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**APPELLANT'S BRIEF**

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## TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST .....	4
II.	RELATED APPEALS AND INTERFERENCES.....	5
III.	STATUS OF CLAIMS .....	6
IV.	STATUS OF AMENDMENTS .....	7
V.	SUMMARY OF CLAIMED SUBJECT MATTER .....	8
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....	29
VII.	ARGUMENT .....	30
	A.    The Rejection of Claims 1-82 as Being Based on a Defective Reissue Oath is Improper .....	30
	B.    Legal Standard .....	31
	C.    The Present Reissue Claims Are the Proper Subject of a Reissue Application.....	34
	1.    The Present Reissue Claims Are Significantly Different from the Non-Elected Claims.....	34
	2.    Reissue Claims 13-77 and 79-82 Are “Linking Claims” Covering Subject Matter from Elected Group 1 and at Least One of Non- Elected Groups 2-4 .....	38
	D.    Reissue Claim 78 Covers Subject Matter from Elected Group 1 and Is Therefore the Proper Subject of a Reissue Application.....	40
	E.    If Reissue Claims 13-82 Are Divisible From the Elected Claims, the Proper Course is a Restriction Requirement, Not a Rejection.....	40
	F.    Conclusion .....	41
VIII.	CLAIMS APPENDIX.....	42
IX.	EVIDENCE APPENDIX.....	59

## TABLE OF AUTHORITIES

### CASES

<i>In re Brouwer</i> , 175 F.2d 564, 568 (CCPA 1949).....	40
<i>In re Doyle</i> , 293 F.3d 1355 (Fed. Cir. 2002) .....	30, 32, 33, 34
<i>Ex Parte Okamoto</i> , Appeal No. 2000-0132 (available at 2006 WL 2523548, *3) (Bd. Pat. App. Oct. 12, 2002) .....	38
<i>In re Orita</i> , 550 F.2d 1277 (CCPA 1977).....	32
<i>In re Swartzel</i> , 1995 U.S. App. LEXIS 15992, *5-6 (Fed. Cir. 1995).....	38
<i>In re Weiler</i> , 790 F.2d 1576, 1579 (Fed. Cir. 1986) .....	32

### STATUTES

35 U.S.C. § 251 .....	31
-----------------------	----

### REGULATIONS

37 C.F.R. § 1.177 .....	42
37 C.F.R. § 176(b) .....	41

### RULES

M.P.E.P. § 803 .....	8
M.P.E.P. § 809 .....	39
M.P.E.P. § 809.03 .....	39
M.P.E.P. § 1450 .....	41

### OTHER AUTHORITIES

65 FED. REG. 54604 .....	41
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**I. REAL PARTY IN INTEREST**

Pursuant to 37 C.F.R. § 41.37(c)(i), the real parties in interest to this appeal are Richard S. Belliveau (“Appellant”) and High End Systems, Inc.

## **II. RELATED APPEALS AND INTERFERENCES**

Pursuant to 37 C.F.R. § 41.37(c)(ii), neither Appellant nor his representatives know of any other application, patent, appeal, interference, appeal or judicial proceedings that may be related to, directly affect, or be directly affected by, or have a bearing on the Board of Patent Appeals and Interferences' ("the Board's") decision in this appeal.

### **III. STATUS OF CLAIMS**

The present reissue Application No. 10/801,177 (“the ‘177 Application”) has 82 claims, including original claims 1–12 from United States Patent No. 6,357,893 (“the ‘893 Patent”) and reissue claims 13–82 added during reissue proceedings. Pursuant to 37 C.F.R. § 41.37(c)(iii), pending claims 1–82 all stand rejected as based on a defective reissue declaration. Appellant is appealing from these rejections for claims 1-82.



#### **IV. STATUS OF AMENDMENTS**

Pursuant to 37 C.F.R. 41.37(c)(iv), no amendments have been filed subsequent to the latest rejection.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Reissue Application No. 10/801,177 (“the ‘177 Application”) has 12 independent claims on appeal, including claims 1, 6, 10, 11–13, 33, 35, 50, 73, 78, and 79. Pursuant to 37 C.F.R. § 41.37(c)(v), a concise explanation of the subject matter claimed in each of these independent claims follows. These concise explanations are intended only for the purpose of facilitating the review of this appeal by the Board. These concise explanations are not intended to, and should not be interpreted to, affect or dictate the interpretation of claim limitations or claim scope.

### **A. Restriction Requirement During Prosecution of the ‘893 Patent**

Claims 1-12 pending in the present reissue application issued as claims 1-12 of original United States Patent No. 6,357,893 (“the ‘893 Patent”), filed as Application No. 09/526,499 (the ‘499 Application”). During prosecution of the ‘499 Application, the Examiner issued a four-way restriction requirement. (Apr. 30, 2001 Office Action.) Although the MPEP provides for the “claims” of an application to be restricted under appropriate circumstances (*see* MPEP § 803), the Examiner followed the unusual course of restricting the application based upon the figures in the application. The Examiner explained: “[t]he first group is directed to figures 2A, 2B, 3A to 3C and 3F, the second group is directed to figure 3D, the third group is directed to figure 3E, and the fourth group is directed to figures 9A and 9B. . . . If applicant wishes to elect group four, Applicant is then further required to elect a single disclosed subspecies between figures 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8 and 12(A-C).” (*Id.* at 2.) In response, the Applicant elected Group 1 (the “Elected Group”) without traverse over the other groups (“the Non-Elected Groups”). (Applicant’s May 23, 2001 Response to Election.) The Applicant elected Group 1 for further prosecution and, subsequently, pending claims 10-24 and 27-49 of the ‘499 Application were cancelled, by way of an Examiner’s amendment, as being directed to a non-elected invention. (Nov. 28, 2001 Notice of Allowability.) The ‘499 Application issued as the ‘893 Patent on

March 19, 2002 without the Applicant filing a divisional application. Claims 1-12 of the '893 patent correspond to claims 1-9, 25-26, and 50 of the '499 Application as originally filed.

**B. Originally Issued Claims 1–12 Cover Subject Matter from Elected Group 1**

The figures of the Elected Group illustrate multi-parameter lights having a substrate with a plurality of light sources, such as light emitting diodes (“LED’s”), fixed to the substrate. (Figures 2A, 2B, 3(A-C), 3F.) In one embodiment, as illustrated in figures 2A, 2B, and 3(A-C), the multi-parameter light has a flexible substrate that may be deformed by mechanical means in order to change the angular relationship of the plurality of light sources. ('893 Patent, col. 7, l. 64–col. 9, l. 16.) In a second embodiment, as illustrated in figure 3F, discrete circuits allow the LEDs to be controlled individually so that “each LED’s intensity (intensity is also meant to refer to on and off and[/]or as well as brightness) could be varied per individual LED.” (*Id.*, col. 10, l. 65–col. 11, l. 1; col. 6, ll. 29-31.) The patent explains that “[t]his could be an advantage when providing control access to multi-color-systems or different intensity levels of each specific color.” (*Id.*, col. 11, ll. 3-6.) The second embodiment as illustrated in Figure 3F may or may not include a flexible substrate. For example, the patent explains that the circuitry of Figure 3F may be used with the embodiment illustrated in Figure 3D, in which the substrate may or may not be flexible. (*Id.*, col. 11, l. 27 (“In FIG. 3D the substrate 312 may or may not be flexible.”); *Id.*, col. 11, ll. 50-53 (“Each LED of the groups of LEDs shown in FIG. 3D are individually controllable by electronic circuitry which may be similar to that of FIG. 3F or with some other circuitry.”)). During prosecution of the '177 Application, the Applicant submitted a declaration of Tam Bailey, who recognized that the '893 Patent’s statement that “the LEDs of Figure 3D of the patent can be controlled by circuitry that may be similar to that disclosed in Figure 3F necessarily suggested that the same circuitry may be used.” (Sept. 10, 2007 Declaration of Tam Bailey, ¶ 6.) The Examiner concluded that the “the affidavit [of Tam Bailey] is acceptable and

the arguments are found persuasive.” (Jan. 3, 2008 Office Action, p. 4). Thus, the discrete circuits of Figure 3F are usable with or without a flexible substrate.

Claims 1-12 of the '893 Patent are directed to the first embodiment described above.

Representative independent claim 1 reads:

1. An apparatus comprising:
  - a flexible substrate to which a plurality of light sources are fixed;
  - a flexible substrate housing in which the flexible substrate is located;
  - wherein the flexible substrate is comprised of a peripheral region and a center region;
  - and further comprising a flexing device for flexing the flexible substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;
  - and wherein in a first state when the flexible substrate is not deformed by the flexing device, each of the plurality of light sources emits light which is concentrated in a first direction;
  - and wherein in a second state when the flexible substrate has been deformed by the flexing device, at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction; and
  - wherein the flexible substrate housing is comprised of a removable holder and a case;
  - wherein the flexing device is comprised of the removable holder and the case;
  - and wherein the removable holder can be connected onto the case; and
  - and wherein the connecting of the removable holder onto the case can cause the flexible substrate to deform.

Similarly, claims 2-12 of the '893 Patent are directed to multi-parameter lights with a flexible substrate that may be deformed by mechanical means in order to change the angular relationship of the plurality of light sources.

During prosecution of the present reissue application, the Examiner asserted that “the subject matter of different wavelength intensities controlled by the electronic control circuitry as claimed [in the pending reissue application] was subject to restriction in the original prosecution.” (Jan. 3, 2008 Office Action, p. 2.) The Examiner further described the elected figures (2A, 3(A-C), 3F) as being directed to “a flashlight having a thread holder with internal grooves threaded or screwed onto the threads mounted on a case to adjust the variable force or pressure, applied by a battery cell, on a flexible substrate having light emitting diodes mounted thereon to cause the substrate to deform in a first state and to not deform in a second state to change the direction of the concentration of the light emitted by the light emitting diodes which are mutually exclusive from other non elected species of figures 3D, 3E, 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8(A-C), 9(A-B) and 12(A-C).” (Mar. 2, 2007 Office Action, p. 2; *see also* Mar. 8, 2005 Office Action, p. 2). This characterization by the Examiner of the subject matter of the Elected Group stands in sharp contrast to the Examiner’s reliance during the original prosecution of the '499 Application on the *figures* of the Application as the basis for the restriction requirement. During prosecution of the '499 Application, the Examiner included Figure 3F (which illustrates discrete circuits for individually controlling the wavelength intensity of light sources) in Elected Group 1. The Examiner considered claims to be directed to non-elected subject matter if they recited even a single element of Figures 3D, 3E, 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), or 12(A-C) of Non-Elected Groups 2, 3, or 4, whether or not the claims also included a flexible substrate limitation such as appears in the Elected Group claims. For example, claim 10 of the '499 Application read:

An apparatus comprising:

a flexible substrate to which a plurality of light sources are fixed;

a flexible substrate housing in which the flexible substrate is located;

wherein the flexible substrate is comprised of a peripheral region and a center region;

and further comprising a flexing device for flexing the substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;

wherein in a first state when the flexible substrate is not deformed by the flexing device each of a plurality of light sources emits light which is concentrated in a first direction;

wherein in a second state when the flexible substrate has been deformed by the flexing device at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction;

*and wherein the flexible substrate has a plurality of ventilation holes.*

(Emphasis added.) The only difference between the subject matter of claim 10 and the subject matter of the elected claims is claim 10's limitation to a "plurality of ventilation holes." As described below, Figures 9(A-B) and 12C of Non-Elected Group 4 illustrate, among other features, ventilation holes. Thus, the Examiner in the original prosecution considered claim 10 to be directed to non-elected subject matter based on the mere presence of a *single element* of the figures of Non-Elected Group 4, even though claim 10 also contained the very flexible substrate limitation which the Examiner has characterized during reissue as being an Elected Group 1 limitation.

Significantly, the Examiner in the original prosecution considered the pending claims of the '499 Application directed to LEDs with individually controllable wavelength intensity (claims 19, 20, 33-36, 37, 39-40, 43, and 49) to be directed to non-elected subject matter *not* on

this basis, but on the basis that they contained at least one limitation illustrated by a Figure of Non-Elected Groups 2, 3, or 4. As noted, the subject matter of LEDs with individually controllable wavelength intensity (claims 19, 20, 33-36, 37, 39-40, 43, and 49) is illustrated in Figure 3F and described in detail in the specification of the '893 patent. ('893 patent, col. 6, ll. 29-31; col. 10, l. 9–col. 11, l. 9.) Although the '893 patent specification explains that the embodiments of Figures 3D and 3E may contain discrete circuits as illustrated in Figure 3F, *id.* col. 11, ll. 50-53; col. 12 ll. 46-48, the Examiner considered Figures 3D and 3E to belong to Non-Elected Groups 2 and 3, respectively, on the basis of additional features that are illustrated in these Figures. These additional features of Figures 3D and 3E are described in more detail below. Similarly, the Examiner in the original prosecution considered claims 19, 20, 33-36, 37, 39-40, 43, and 49 of the '499 Application to be directed to non-elected subject matter on the basis that they contained—above and beyond LEDs with individually controllable wavelength intensity—at least one additional limitation illustrated by a Figure of Non-Elected Groups 2, 3, or 4.

**C. Non-Elected Claims of the '499 Application Cover Subject Matter from Non-Elected Groups 2, 3, and 4**

As noted above, during prosecution of the '893 Patent, the Examiner issued a restriction requirement based on the figures in the application. The applicant elected Group 1 for further prosecution and, subsequently, pending claims 10-24 and 27-49 of the '499 Application were cancelled, by way of an Examiner's amendment, as being directed to a non-elected invention. (Nov. 28, 2001 Notice of Allowability.)<sup>1</sup>

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<sup>1</sup> As noted previously, claims 1-12 of the '893 patent correspond to claims 1-9, 25-26, and 50 of the '499 Application as originally filed.

Below is a brief description of the subject matter covered by Non-Elected Groups 2, 3, and 4.

**1. Non-Elected Group 2: Figure 3D**

Figure 3D, which corresponds to Non-Elected Group 2, illustrates a multi-parameter light which has a substrate with a plurality of light sources that are “arranged in a multi wavelength distribution pattern. (I.e. different colors mean different wavelengths.)” (’893 Patent, col. 11, ll. 32-33.) Figure 3D depicts the use of a white light source, along with red, green, and blue light sources. The patent explains that the use of a white light source is an improvement over the prior art (use of an amber or yellow light source) because white light LEDs “help to provide a greater range of pastel colors including those in the blue-green wavelengths.” (*Id.*, col. 3, ll. 34-42.)

**2. Non-Elected Group 3: Figure 3E**

Figure 3E, which corresponds to Non-Elected Group 3, is a variation of Figure 3D, in which the substrate has a plurality of light sources that are primarily white continuous spectrum LEDs. The patent explains that the “use of white light source LEDs is an advantage over a color additive system constructed of red, green, and blue light sources. The white light sources can provide a continuous spectrum of visible white light. This can be an advantage when lighting critical objects of various colors.” (*Id.*, col. 12, ll. 49-53.)

**3. Non-Elected Group 4: Figures 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), and 12(A-C)**

Figures 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), and 12(A-C), which correspond to Non-Elected Group 4, are directed to multi-parameter lights which include, *inter alia*, the following variable parameters:

- a flexible substrate that may be deformed by the use of stepper motor device.  
(Figs. 4(A-C), 7B, 7C; col. 12, l. 54–col. 13, l. 39);



- a flexible substrate that may be deformed by the use of an electromagnetic device (Figs. 5(A-C); col. 13, l. 40–col. 14, l. 14);
- a flexible substrate that may be deformed by a cam system (Figs. 6(A-C); col. 14, ll. 15-51);
- a substrate with ventilation holes which “are strategically placed in the substrate as to provide airflow either by a forced air system or by convection and to assist in dissipation of unwanted heat that is generated by the light sources and increase the life of the light sources.” (col. 3, ll. 6-19; Figs. 9(A-B), 12C; col. 17, l. 13–col. 18, l. 2);
- a fan (Fig. 9B);
- a communications component or communications board that provides information as to how a plurality of light sources may be controlled (Fig. 12C; col. 19, ll. 20-35);
- a lamp driver circuit (Fig. 12C; col. 19, ll. 1-4);
- a yoke (Figs. 7(A-C), 8);
- a bearing arrangement which allows a lamp housing to pan and tilt the light emitted by the lamp housing in relation to an electronics housing (Figures 7(A-C), 8; 12(A-C); col. 15, l. 40–col. 15, l. 14); and
- a variable filter which causes the concentration of light to come out of the filter in a particular direction or directions (Figs. 12(A-C)).

**D. Non-Original Reissue Claims 13-77 and 79-82 Cover Subject Matter from Both Elected and Non-Elected Groups**

As noted above, claims 13-77 and 79-82, including independent claims 13, 33, 35, 50, 73, and 79, were added by the reissue application. (*See Claims Appendix.*) Non-original claims 13-

77 and 79-82 cover subject matter from both Elected Group 1 and at least one of Non-Elected Groups 2-4. Each of the non-original claims covers subject matter from Elected Group 1 because each claim is directed to the embodiment illustrated in Figure 3F in which discrete circuits allow for varying the intensity of individual LEDs or different portions of LEDs. ('893 Patent, Fig. 3F, col. 10, l. 65–col. 11, l. 9.) For example, independent claim 13 is directed to a lighting apparatus with a substrate, “wherein the substrate has a first circuit and a second circuit” which allow for individually varying the intensity of portions of LEDs. Moreover, each of claims 13-77 and 79-82 covers subject matter from Non-Elected Groups 2-4, as described in more detail below.

Claim 13 of the present reissue application states<sup>2</sup>:

13. A lighting apparatus comprising:

a substrate;

a plurality of light emitting diodes;

*a lamp driver circuit;*

*a communications component;*

a first housing in which the substrate is located;

wherein the substrate has a first circuit and a second circuit;

wherein the lamp driver circuit is electrically connected to the first circuit and the second circuit;

**wherein a first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can**

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<sup>2</sup> In claim 13 (and the remainder of the reissue claims discussed in this section) the boldface text indicates subject matter corresponding to Elected Group 1 and the italicized text indicates subject matter corresponding to Non-Elected Groups 2, 3, or 4.

**vary the intensity of the light emitted by the first portion of the plurality of light emitting diodes;**

**wherein a second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of the light emitted by the second portion of the plurality of light emitting diodes;**

wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;

*wherein the second color is generated by white light emitting diodes; and*

wherein the communications component can receive a control command for varying either the intensity of the first portion of the plurality of light emitting diodes or the second portion of the plurality of light emitting diodes to change the color temperature of the light emitted from the plurality of light emitting diodes.

(Emphases added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 13 covers subject matter from both Non-Elected Groups 2 and 4. As described above, Figure 3D (Non-Elected Group 2) illustrates the use of a white light source (371d) along with LEDs of at least one other color. In addition, Figure 12C (Non-Elected Group 4) illustrates a lamp driver circuit (2280) and a processor (or communications component or communications board) (2266) which provides information as to how a plurality of light sources may be controlled. ('893 Patent, col. 19, ll. 1-4, 29-38.) Importantly, claim 13 recites “a lamp driver circuit” and “a communications component,” significant limitations not present in any of the non-elected claims.

Claims 14-32 are dependent on claim 13 and have further limitations.

Claim 33 of the present reissue application states:

33. A lighting apparatus for projecting light onto a surface comprising:

a substrate;

a first housing, in which the substrate is located;

a plurality of light emitting diodes comprised of a first portion and a second portion each of the first and the second portion emitting light having an intensity;

*a variable filter;*

*a lamp driver;*

*a communications component;*

wherein the substrate has a first circuit and a second circuit;

wherein the lamp driver is electrically connected to the first circuit and the second circuit;

**wherein the first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can vary the intensity of the light emitted by the first portion of the plurality of light emitting diodes;**

**wherein the second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of the light emitted by the second portion of the plurality of light emitting diodes;**

wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;

wherein the light emitted from the first portion and the second portion of the plurality of light emitting diodes is emitted through the variable filter; and

wherein the communications component can receive a control command for varying control information to the variable filter.

(Emphases added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 33 covers subject matter from Non-Elected Group 4. As described above, Figure 12C (Non-Elected Group 4) illustrates a lamp driver circuit (2280) and a

processor (or communications component or communications board) (2266) which provides information as to how a plurality of light sources may be controlled. ('893 Patent, col. 19, ll. 1-4, 29-38.) Figures 12(A-C) also illustrate a variable filter which causes the concentration of light to come out of the filter in a particular direction or directions. Importantly, claim 33 recites “a lamp driver circuit” and “a communications component,” significant limitations not present in any of the non-elected claims.

Claim 34 depends on claim 33 and has further limitations.

Claim 35 of the present reissue application states:

35. A lighting apparatus for projecting light onto a surface comprising:

a substrate;

*a communications component;*

first, second, third, fourth, fifth and sixth light emitting diodes each of which is fixed to the substrate;

a first housing wherein the substrate is located;

wherein each of the first, second, third, fourth, fifth and sixth light emitting diodes emits light having an intensity;

**wherein the substrate has first, second, third, fourth, fifth and sixth circuits;**

**wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;**

**wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;**

**wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;**

**wherein the fourth light emitting diode is connected to the fourth circuit and the fourth circuit can vary the intensity of light emitted by the fourth light emitting diode;**

**wherein the fifth light emitting diode is connected to the fifth circuit and the fifth circuit can vary the intensity of light emitted by the fifth light emitting diode;**

**wherein the sixth light emitting diode is connected to the sixth circuit and the sixth circuit can vary the intensity of light emitted by the sixth light emitting diode;**

**wherein each of the intensities of light of the first, second, third, fourth, fifth, and six light emitting diodes can be varied independently of each of the other intensities of light of the first, second, third, fourth, fifth, and sixth light emitting diodes;**

**wherein the first, second, third, fourth, fifth and sixth light emitting diodes emit light of first, second, third, fourth, fifth and sixth wavelengths, respectively;-**

**and wherein the communications component can receive a control command for varying each of the intensities of light of the first, second, third, fourth, fifth and sixth light emitting diodes.**

(Emphasis added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 35 covers subject matter from Non-Elected Group 4. As described above, Figure 12C (Non-Elected Group 4) illustrates a processor (or communications component or communications board) (2266) which provides information as to how a plurality of light sources may be controlled. ('893 Patent, col. 19, 29-38.) Importantly, claim 35 recites “a communications component,” a significant limitation not present in any of the non-elected claims.

Claims 36-49 are dependent on claim 35 and have further limitations.

Claim 50 of the present reissue application states:

50. A lighting apparatus for projecting light onto a surface comprising:

a substrate;

first, second, third, fourth, fifth and sixth light emitting diodes, each of which is fixed to the substrate;

a first housing in which the substrate is located;

*a communications component;*

wherein each of the first, second, third, fourth, fifth and sixth light emitting diodes emit light having an intensity;

**wherein the substrate has first, second, third, fourth, fifth and sixth circuits;**

**wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;**

**wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;**

**wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;**

**wherein the fourth light emitting diode is connected to the fourth circuit and the fourth circuit can vary the intensity of light emitted by the fourth light emitting diode;**

**wherein the fifth light emitting diode is connected to the fifth circuit and the fifth circuit can vary the intensity of light emitted by the fifth light emitting diode;**

**wherein the sixth light emitting diode is connected to the sixth circuit and the sixth circuit can vary the intensity of light emitted by the sixth light emitting diode;**

**wherein each of the light intensities of the first, second, third, fourth, fifth and six light emitting diodes can be varied independently of each of the other light intensities of the first, second, third, fourth, fifth, and sixth light emitting diodes;**

and wherein the first, second, third, fourth, fifth and sixth light emitting diodes all emit light of a first color; and

wherein the communications component can receive a control command for varying each of the light intensities of each

of the first, second, third, fourth, fifth and sixth light emitting diodes.

(Emphasis added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 50 covers subject matter from Non-Elected Group 4. As described above, Figure 12C (Non-Elected Group 4) illustrates a processor (or communications component or communications board) (2266) which provides information as to how a plurality of light sources may be controlled. ('893 Patent, col. 19, ll. 29-38.) Importantly, claim 50 recites “a communications component,” a significant limitation not present in any of the non-elected claims.

Claims 51-72 are dependent on claim 50 and have further limitations.

Claim 73 of the present reissue application states:

73. A lighting device for projecting light onto a surface comprising:

*a first housing;*

the first housing comprising a substrate and a plurality of light emitting diodes;

**wherein the substrate has a first circuit and a second circuit;**

**wherein a first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can vary the intensity of light emitted by the first portion of the plurality of light emitting diodes;**

**wherein a second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of light emitted by the second portion of the plurality of light emitting diodes;**

wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;



wherein the plurality of light emitting diodes have respective directions of light energy emission;

*a second housing; and*

a power applying component disposed in the second housing;

wherein the power applying component is electrically coupled to the light emitting diodes for applying power to the light emitting diodes; and

*wherein the first housing is rotationally mounted to the second housing for revolving the first housing relative to the second housing to vary the direction of light energy emission relative to the second housing.*

(Emphases added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 73 covers subject matter from Non-Elected Group 4. Figures 7(A-C), 8, and 12(A-C) (Non-Elected Group 4) illustrate a first and second housing wherein the first housing is rotationally mounted to the second housing for revolving the first housing relative to the second housing to vary the direction of light energy emission relative to the second housing. ('893 Patent, col. 15, ll. 62-64; col. 19, ll. 23-26.) Importantly, claim 73 recites “a power applying component,” a significant limitation not present in any of the non-elected claims.

Claims 74-77 are dependent on claim 73 and have further limitations.

Claim 79 of the present reissue application specifies:

79. A lighting apparatus for projecting light onto a surface comprising:

a substrate;

*a first housing* in which the substrate is located;

*a second housing;*

*a yoke;*

a first, a second and a third light emitting diode, each of which is fixed to the substrate;

*a communications component;*

wherein each of the first, second and third light emitting diodes emits light having an intensity;

**wherein the substrate has first, second, and third circuits;**

**wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;**

**wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;**

**wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;**

**wherein each of the light intensities of the first, second and third light emitting diodes can be varied independently of each of the other light intensities of the first, second, and third light emitting diodes;**

wherein the first light emitting diode emits light of a first color;

wherein the second light emitting diode all emits light of a second color;

wherein the third light emitting diode emits light of a third color;

wherein the communications component can receive a control command for varying either any of the light intensities of the first, second, and third light emitting diodes;

*and wherein the first housing can be positioned in relation to the second housing by remote control.*

(Emphases added.) In addition to covering subject matter from Elected Group 1 (*i.e.*, discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F), claim 79 covers subject matter from Non-Elected Group 4. As

described above, Figure 12C (Non-Elected Group 4) illustrates a processor (or communications component or communications board) (2266) which provides information as to how a plurality of light sources may be controlled. ('893 Patent, col. 19, 29-38.) In addition, Figures 7(A-C), 8, and 12(A-C) (Non-Elected Group 4) illustrate a first and second housing wherein the first housing is rotationally mounted to the second housing for revolving the first housing relative to the second housing to vary the direction of light energy emission relative to the second housing. ('893 Patent, col. 15, ll. 62-64; col. 19, ll. 23-26.) Finally, Figures 7(A-C) and 8 (Non-Elected Group 4) illustrate the use of a yoke (866 or 1022). Importantly, claim 79 recites “a communications component,” a significant limitation not present in any of the non-elected claims.

Claims 80-82 are dependent on claim 79 and have further limitations.

**E. Non-Original Claim 78 Covers Subject Matter from Elected Group 1**

As noted above, non-original claim 78 was added by the reissue application. (*See* Claims Appendix.) Non-original claim 78 covers subject matter from Elected Group 1 because it is directed to the embodiment illustrated in Figure 3F in which there are discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs. ('893 Patent, col. 10, l. 65–col. 11, l. 9.)

Claim 78 of the present reissue application states:

78. An apparatus comprising:
- a housing;
  - a substrate disposed in the housing, the substrate having a plurality of individually controllable circuits; and
  - first, second, third, fourth, and fifth light emitting diodes respectively fixed to the circuits of the substrate for directing light from the housing;

wherein the first, second, third, fourth, and fifth light emitting diodes have respectively independently variable light intensities;

wherein the first, second, third, fourth, and fifth light emitting diodes emit light of first, second, third, fourth, and fifth wavelengths, respectively; and

wherein the first, second, third, fourth, and fifth wavelengths produce respectively different colors.

Accordingly, if Claim 78 had been presented during the original prosecution of the '893 patent, it could have been prosecuted alongside the claims of Elected Group 1.

**F. Chart Comparing Subject Matter of Reissue Claims for U.S. Application No. 10/801,177**

<b>Reissue Claim No.</b>	<b>Elected Group I Fig. 3F</b>	<b>Non-Elected Group II Fig. 3D</b>	<b>Non-Elected Group III Fig. 3E</b>	<b>Non-Elected Group IV Figs. 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), or 12(A-C)</b>
Claim 13	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>	<ul style="list-style-type: none"> <li>use of white light source LEDs</li> </ul>		<ul style="list-style-type: none"> <li>lamp driver circuit;</li> <li>communications component</li> </ul>
Claim 33	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			<ul style="list-style-type: none"> <li>variable filter;</li> <li>lamp driver;</li> <li>communications component</li> </ul>
Claim 35	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			<ul style="list-style-type: none"> <li>communications component</li> </ul>
Claim 50	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			<ul style="list-style-type: none"> <li>communications component;</li> </ul>
Claim 73	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			<ul style="list-style-type: none"> <li>first housing;</li> <li>second housing;</li> <li>first housing is rotationally mounted to the second housing for revolving the first housing relative to the second housing to vary the direction of light energy emission relative to the second housing</li> </ul>
Claim 78	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			

Reissue Claim No.	Elected Group I Fig. 3F	Non-Elected Group II Fig. 3D	Non- Elected Group III Fig. 3E	Non-Elected Group IV Figs. 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), or 12(A-C)
Claim 79	<ul style="list-style-type: none"> <li>discrete circuits for individually varying intensity of LEDs</li> </ul>			<ul style="list-style-type: none"> <li>first housing;</li> <li>second housing;</li> <li>yoke;</li> <li>communications component</li> <li>first housing can be positioned in relation to the second housing by remote control</li> </ul>

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-82 are rejected under 35 U.S.C. § 251 as being based on a defective reissue oath or declaration for lack of error.

In a January 3, 2008 non-final rejection, the Examiner rejected Claims 1-82 on the following grounds: First, the Examiner found that the non-original reissue claims were not the proper subject of a reissue application because the Federal Circuit's holding in *In re Doyle*, 293 F.3d 1355 (Fed. Cir. 2002) extends to only "genus-type" "linking claims" as opposed to other types of linking claims. Second, the Examiner found that the subject matter of the pending reissue claims was subject to restriction in the original prosecution. (Jan. 3, 2008 Office Action pp. 2-3 ("Applicant's attention is directed to claims 20 to 22 and 39 in the original application where they claim electronic control circuitry for controlling the wavelength intensity of the light sources which was restricted away from the mechanical means such as a flexing device to flex the flexible substrate with the light sources mounted thereon to control different light directions as evidence [sic] by the patent claims.")).

As described above, during prosecution of the original '893 patent (the '499 Application), the Examiner issued a restriction requirement based on the figures of the '499 Application and considered Figure 3F, which illustrates discrete circuitry for controlling the wavelength intensity of light sources, to be part of Elected Group 1. Thus, the Examiner considered pending claims 20-22 and 39 (as well as claims 33-36, 37, 40, 43, and 49) to be directed to non-elected subject matter on the basis that they contained at least one limitation illustrated in a Figure of Non-Elected Groups 2, 3, or 4, and *not* on the basis that they contained subject matter directed to LEDs with individually controllable wavelength intensity.

## VII. ARGUMENT

### A. The Rejection of Claims 1-82 as Being Based on a Defective Reissue Oath is Improper

This appeal involves a single, narrow issue—namely, whether the inadvertent failure to prosecute claims that are substantially different from the non-elected claims canceled following a restriction requirement, and that could have been prosecuted along with the elected claims, is a type of error that can be corrected through a reissue proceeding under 35 U.S.C. § 251. The Federal Circuit’s decision in *In re Doyle*, 293 F.3d 1355 (Fed. Cir. 2002), is controlling precedent and mandates reversal of the Examiner’s rejection of pending claims 1-82.

In *Doyle*, the Federal Circuit held that the failure to prosecute claims following issuance of a restriction requirement is an error correctable by reissue if: (1) the claims are substantially different from the non-elected claims during the original prosecution; and (2) the reissue claims could have been prosecuted alongside the claims of the elected group. 293 F.3d at 1361. In particular, the court held that the failure to present a “linking claim” in the circumstances outlined above is an error correctable by reissue. *Id.* In this case, the requirements of *Doyle* are met. As in *Doyle*, the claims on appeal are substantially different from the non-elected claims that were cancelled during the original prosecution. Also, as in *Doyle*, the pending reissue claims could have been prosecuted alongside the elected claims since (1) claims 13-77 and 79-82 are “linking” claims covering subject matter from both Elected Group 1 and at least one of Non-Elected Groups 2-4, and (2) claim 78 covers only subject matter of the Elected Group.

Reissue claims 13-77 and 79-82 are substantially different from the non-elected claims that were cancelled during prosecution of the ’893 patent because they contain significant additional limitations not present in any of the non-elected claims. Moreover, contrary to the Examiner’s assertions, (Jan. 3, 2008 Office Action, p. 2), the subject matter of LEDs with individually controllable wavelength intensity was *not* subject to restriction in the original



prosecution. During prosecution of the '499 Application, the Examiner issued a restriction requirement based on the *figures* of the Application, and included Figure 3F (which illustrates discrete circuits for individually controlling wavelength intensity of light sources) in Elected Group 1. Although certain of the cancelled claims of the '499 Application were directed to LEDs with individually controllable wavelength intensity, it was *not* on this basis that these claims were considered to be directed to non-elected subject matter. Instead, the Examiner considered these claims to be directed to non-elected subject matter because they contained at least one limitation illustrated in Figure 3D, 3E, 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), or 12(A-C) of Non-Elected Groups 2, 3, or 4.

In addition, claims 13-77 and 79-82 are linking claims that could have been prosecuted alongside the elected claims because they cover subject matter from Elected Group 1 and at least one of Non-Elected Groups 2-4.

To the extent the Examiner believes that reissue claims 13-82 are patentably distinct from those in the Elected Group, the proper course is to issue a restriction requirement under 37 C.F.R. § 1.176(b).

## **B. Legal Standard**

35 U.S.C. § 251 sets forth the requirements for reissuance of a patent:

Whenever any patent is, through error without any deceptive intention, deemed wholly or partially inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The reissue statute is “remedial in nature, based on fundamental principles of equity and fairness, and should be construed liberally.” *Doyle*, 293 F.3d at 1361 (citing *In re Weiler*, 790 F.2d 1576, 1579 (Fed. Cir. 1986)). Although every misstep by an inventor or attorney during prosecution does not qualify as a correctable error under § 251, there is no question that an applicant is entitled to pursue claims in a reissue proceeding that are not substantially similar to the original non-elected claims, and that could have been prosecuted alongside the original elected claims. *Doyle*, 293 F.3d at 1361.

Under the long-standing “*Orita* doctrine”, *In re Orita*, 550 F.2d 1277 (CCPA 1977), a reissue applicant is precluded “from obtaining substantially identical claims to those of nonelected groups identified in an examiner’s restriction requirement when such claims could not have been prosecuted in the application from which they were restricted.” *Id.*, 293 F.3d at 1359. In *Doyle*, the Federal Circuit made clear that the *Orita* doctrine does not preclude a reissue applicant from presenting reissue claims merely because the claims *read on subject matter of non-elected groups*. *Id.*, 293 F.3d at 1361. Instead, the relevant inquiry in this regard is whether the reissue claims could have been prosecuted alongside the elected claims in the original prosecution. *Id.*

The inventor in *Doyle* developed a genus of chiral transition metal catalysts and a method of using them. During prosecution, the examiner imposed a nine-way restriction requirement, and Doyle elected group VI, with claims directed to a method of using Doyle’s catalysts to insert carbenes into certain chemical bonds. Doyle cancelled the other pending claims and did not file any divisional applications directed toward the non-elected groups during the pendency of the application. Doyle subsequently filed a reissue seeking to broaden his claims to cover the use of his catalysts with a *genus* of prochiral molecules (as opposed to only molecules used for the insertion of a carbene). The examiner rejected Doyle’s new reissue claims on the ground that the

reissue declaration was invalid under *Orita*. The Board affirmed the examiner's rejection based on the reasoning that Dr. Doyle was impermissibly seeking to "circumvent the *Orita* doctrine by presenting reissue claims that encompass not only the subject matter of the canceled, non-elected claims of the original patent application but also additional subject matter." *Id.*, 293 F.3d at 1359.

On appeal, the Federal Circuit reversed the Board's rejection of Doyle's claims and distinguished the claims from the claims in *Orita* on the following grounds:

*First, Dr. Doyle's new claims are neither identical nor substantially similar to the nonelected claims.* Dr. Doyle's new claims are genus claims, whereas the nonelected claims are species that fall within the new genus claims. In other words, the reissue claims are substantially broader than the claims of the nonelected groups. Thus, the estoppel rationale underlying *In re Orita* and *In re Watkinson* does not apply here. In the earlier cases, it was crucial that the applicant explicitly agreed to the requirement of independent prosecution of the disputed claims (or claims substantially similar to the disputed claims) in a divisional, and not as a part of the application directed towards the group.

\* \* \*

There is another critical and indeed dispositive difference between the present case and *In re Orita*: *Dr. Doyle could have prosecuted his reissue claims with the claims of the elected group.* Indeed, as the Solicitor concedes, **these linking claims**<sup>3</sup> not only could have but *should have* been prosecuted with the elected group. This undercuts the other, more important rationale of *In re Orita*: that the issued patent contains no error. This second rationale underlying the result in *In re Orita* turned on the fact that the applicant could not have asserted the new reissue claims with

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<sup>3</sup> The Federal Circuit explained that Doyle's reissue claims were so-called "linking" claims because they were "broad enough to read on -- or link -- two or more groups of claims subject to a restriction requirement." *Doyle*, 293 F.3d at 1358.

the elected group. . . . In contrast, Dr. Doyle could have prosecuted his claims with the elected group without running afoul of the restriction requirement because they are linking claims. *See Manual of Patent Examining Procedure* § 809.03 (8<sup>th</sup> ed. 2001).

*Doyle*, 293 F.3d at 1360 (emphases added).

Thus, the court concluded that Doyle's failure to prosecute the reissue claims in the original application was an error correctable by reissue because: (1) the claims were not of substantially similar scope as the nonelected species claims"; and (2) the claims "could have been asserted along with the elected group" because they were "linking claims." *Id.*, 293 F.3d at 1361.

**C. The Present Reissue Claims Are the Proper Subject of a Reissue Application**

**1. The Present Reissue Claims Are Significantly Different from the Non-Elected Claims**

As described below, each of the pending reissue claims 13-82 is significantly different from, and all but claim 78 include limitations *not* present in, the Non-Elected claims. Rather than contesting the significant differences between the pending reissue claims and the Non-Elected Claims from the original prosecution, the Examiner instead contends that:

[T]he subject matter of different wavelength intensities controlled by the electronic control circuitry as claimed was subject to restriction in the original prosecution. Applicant's attention is directed to claims 20 to 22 and 39 in the original application . . . . Although the control circuitry is further defined in the reissue claims but this does not remove or prevent the fact that this control circuitry to control the different wavelength intensities of the light sources was presented and restricted in the original prosecution, and by failing to pursue [sic] a divisional application regarding this subject matter, [sic] Applicant cannot now undo the election by contending, on the present record, that the subject matter as claimed in the reissue claims, such that the control circuitry for controlling different wavelength intensities of the light sources, had never been filed before in the original prosecution and therefore failure to file a divisional application to such subject matter was not a deliberate act.

(Jan. 3, 2008 Office Action at 2-3.)

As the court in *Doyle* made clear, however, whether the reissue claims read on subject matter of non-elected claims is not outcome determinative. Instead, the relevant inquiry is whether the reissue claims are significantly different from the cancelled non-elected claims. As described above, each of the non-original reissue claims is directed to discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs as illustrated in Figure 3F. ('893 Patent, col. 10, l. 65–col. 11, l. 9.) For example, pending reissue claim 13 is directed to a lighting apparatus comprising a substrate with “a first circuit and a second circuit” which allow for the intensity of portions of LEDs to be controlled individually.

Contrary to the Examiner’s assertions, (*see, e.g.*, Jan. 3, 2008 Office Action, p. 2), however, the subject matter of discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs was *not* subject to restriction in the original prosecution. As described above, during prosecution of the '499 Application, the Examiner issued a restriction requirement based on the *figures* of the Application, and included Figure 3F (which illustrates discrete circuits for individually controlling wavelength intensity of light sources) in Elected Group 1. (Apr. 30, 2001 Office Action, p. 2) As a result, although certain of the cancelled claims (19, 20, 33-36, 37, 39-40, 43, and 49) of the '499 Application were directed to LEDs with individually controllable wavelength intensity, it was *not* on this basis that these claims were considered to be directed to non-elected subject matter. Instead, the Examiner considered these claims to be directed to non-elected subject matter because they contained at least one limitation illustrated in Figure 3D, 3E, 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8, 9(A-B), or 12(A-C) of Non-Elected Groups 2, 3, or 4. The subject matter of LEDs with individually controllable wavelength intensity (claims 19, 20, 33-36, 37, 39-40, 43, and 49) is illustrated in Figure 3F and described in detail in the specification of the '893 patent. ('893 patent, col. 10, l.

9—col. 11, l. 9.) Although the '893 patent specification explains that the embodiments of Figures 3D and 3E may contain discrete circuits that allow for individually controllable wavelength intensities as illustrated in Figure 3F, *id.* col. 11, ll. 50-53; col. 12 ll. 46-48, the Examiner considered Figures 3D and 3E to belong to Non-Elected Groups 2 and 3, respectively, on the basis of additional features that are illustrated in these Figures.<sup>4</sup> Similarly, the Examiner in the original prosecution considered claims 19, 20, 33-36, 37, 39-40, 43, and 49 of the '499 Application to be directed to non-elected subject matter on the basis that they contained—above and beyond LEDs with individually controllable wavelength intensity—at least one additional limitation illustrated by a Figure of Non-Elected Groups 2, 3, or 4.

Importantly, pending reissue claims 13-77 and 79-82 are significantly different from the non-elected claims because each claim includes the following limitations that are *not* present in any of the non-elected claims:

- Independent reissue claim 13—each of whose limitations are present in dependent claims 14-32—recites “a lamp driver circuit” and “a communications component,” limitations not present in any of the non-elected claims;

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<sup>4</sup> As explained above, Figure 3D illustrates a multi-parameter light which has a substrate with a plurality of light sources, including white, red, green, and blue light sources, that are arranged in a multi wavelength distribution pattern. Figure 3E is a variation of Figure 3D, in which the substrate has a plurality of light sources that are primarily white continuous spectrum LEDs.

- Independent reissue claim 33—each of whose limitations are present in dependent claim 34—recites “a lamp driver” and “a communications component,” limitations not present in any of the non-elected claims;
- Independent reissue claim 35—each of whose limitations are present in dependent claims 36-49—recites “a communications component,” a limitation not present in any of the non-elected claims;
- Independent reissue claim 50—each of whose limitations are present in dependent claims 51-72—recites “a communications component,” a limitation not present in any of the non-elected claims;
- Independent reissue claim 73—each of whose limitations are present in dependent claims 74-77—recites “a power applying component,” a limitation not present in any of the non-elected claims;
- Independent reissue claim 79—each of whose limitations are present in dependent claims 80-82—recites “a communications component,” a limitation not present in any of the non-elected claims.

None of the non-elected claims contains the limitations identified above at all, much less in combination with a limitation to discrete circuits which allow for varying the intensity of individual LEDs as illustrated in Figure 3F. These differences render reissue claims 13-77 and 79-82 significantly different from the Non-Elected claims. Moreover, no formal restriction requirement was issued with respect to claims drawn to combinations of the limitations identified above, as such claims were not presented in Appellant’s original application. *See In re Swartzel*, 1995 U.S. App. LEXIS 15992, \*5-6 (Fed. Cir. 1995) (non-precedential) (“[W]e decline to extend any mechanical rule against reissue where the PTO’s actions are only ‘tantamount’ to a restriction requirement.”); *Ex Parte Okamoto*, Appeal No. 2000-0132 (available at 2006 WL

2523548, \*3) (Bd. Pat. App. Oct. 12, 2002) (“In the present case, no formal restriction requirement of claims drawn to a combination of a separating agent and a chromatographic column was ever imposed by the examiner, or acquiesced by the appellants, since they were not presented in the appellants’ original application. Thus, it cannot be argued that the appellants’ failure to file a divisional application to such subject matter was a deliberate act and not an error under Section 251.”).

**2. Reissue Claims 13-77 and 79-82 Are “Linking Claims” Covering Subject Matter from Elected Group 1 and at Least One of Non-Elected Groups 2-4**

Reissue claims 13-77 and 79-82 could have been prosecuted along with the elected claims in the original application because they are “linking” claims which, as described above, cover subject matter from Elected Group 1 and at least one of Non-Elected Groups 2-4. As recognized by the *Doyle* court, the failure to prosecute non-elected claims does not preclude the applicant from pursuing linking claims in a reissue application.

The concept of “linking claims” is much broader than the genus-type linking claims at issue in *Doyle*. The MPEP provides explicitly that linking claims include any type of claim that links together otherwise divisible subject matter and thereby renders the otherwise divisible subject inseparable:

There are a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the claims of the application to one would be proper, but presented in the same case are one or more claims (generally called “linking” claims) inseparable therefrom and thus linking together the otherwise divisible inventions.

MPEP § 809. According to the MPEP, the “most common type of linking claims” includes, but is not limited to, “genus claims linking species claims” (such as those at issue in *Doyle*). *Id.* Clearly, the concept of a “linking claim” is a broad term—far broader than the type at issue in *Doyle*—and extends to hybrid claims that cover subject matter from elected and non-elected



groups.<sup>5</sup> Indeed, the MPEP provides not only that an applicant can proceed with an elected group and linking claims, but also that the applicant is entitled to pursue the non-elected claims if the linking claims survive scrutiny. MPEP 809 (“The linking claims must be examined with, and thus are considered part of, the invention elected. When all claims directed to the elected invention are allowable, should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn.”).

The courts, like the M.P.E.P., have endorsed this broad reading of the term “linking claim.” Importantly for the present reissue claims, the courts have characterized hybrid claims (*i.e.*, claims including limitations from more than a single species) as “linking claims”:

*In re Freeman, supra*, is a case where the examiner had divided the claims of the application into five groups and required division between those groups. . . . In its supplemental decision therein, the board selected claim 40 as representative of claims 37-42, and held that *it included a specific improvement in winding and unwinding means set forth in certain group 1 claims and also specific safety means recited in groups 4 and 5*. The board considered claims 37-42 as ‘linking claims’ . . . .

*In re Brouwer*, 175 F.2d 564, 568 (CCPA 1949) (addressing claims including a combination of limitations from two distinct groups) (emphasis added). Claims that tie together the elected and non-elected groups (as described in MPEP 809) are linking claims irrespective of whether they are broad genus claims (as described in *Doyle*) or narrower hybrid claims (as described in *Brouwer* and *Freeman*).

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<sup>5</sup> In addition, there are yet other kinds of “linking claims,” as reflected in section 809.03 of the February 2003 revision of the original Eighth Edition of the M.P.E.P. M.P.E.P. (8<sup>th</sup> Ed. 2003) § 809.03 (recognizing at least four different categories of linking claims).

**D. Reissue Claim 78 Covers Subject Matter from Elected Group 1 and Is Therefore the Proper Subject of a Reissue Application**

Reissue claim 78 could have been prosecuted along with the non-elected claims in the original application because it covers only subject matter from Elected Group 1. As described above, claim 78 is directed to the embodiment illustrated in Figure 3F in which there are discrete circuits which allow for varying the intensity of individual LEDs or different portions of LEDs. ('893 Patent, col. 10, l. 65–col. 11, l. 9.).

**E. If Reissue Claims 13-82 Are Divisible From the Elected Claims, the Proper Course is a Restriction Requirement, Not a Rejection.**

The Examiner has contended that the subject matter of the pending reissue claims is “independent and distinct” from the subject matter of the Elected and Non-Elected Claims. (March 20, 2007 Office Action at 3). Appellant disagrees because, as explained above, reissue claims 13-77 and 79-82 are linking claims reciting in part subject matter from the Elected Group, and claim 78 recites only subject matter from the Elected Group. However, even assuming *arguendo* the Examiner were correct, such “independent and distinct” claims fall squarely within 37 C.F.R. § 176(b).

Following *Orita*, 37 C.F.R. § 1.176 was rewritten to make clear that reissue applications may include inventions distinct from the originally claimed inventions:

Restriction between subject matter of the original patent claims and previously unclaimed subject matter may be required (restriction involving only subject matter of the original patent claims will not be required). If restriction is required, the subject matter of the original patent claims will be held to be constructively elected unless a disclaimer of all the patent claims is filed in the reissue application, which disclaimer cannot be withdrawn by applicant.

37 C.F.R. § 1.176(b). The history of this regulation reflects that subsection (b) was added “to eliminate the prohibition against requiring division in a reissue application.” 65 FED. REG.

54604. Rule 176(b), therefore, now allows an examiner to make a restriction requirement in a

reissue application between “subject matter of the original patent claims and *previously unclaimed subject matter*.” 37 C.F.R. § 1.176(b). (emphasis added). M.P.E.P. § 1450 further states that Rule 176(b) “permits the examiner to require restriction in a reissue application between claims newly added in a reissue application and the original patent claims, where the added claims are directed to an invention which is separate and distinct from the invention(s) defined by the original patent claims.” *Id.*

If the Examiner concludes that the pending claims are indeed directed to a separate and distinct invention, the Examiner is free to issue a restriction requirement between the originally issued patent claims 1-12 and the reissue claims 13-82. The original patent claims will then be held to be constructively elected, while the non-elected, newly added reissue claims are held in abeyance in a withdrawn status and only examined if filed in a divisional reissue application pursuant to 37 C.F.R. § 1.177.


**F. Conclusion**

For the reasons given above, the allowance of rejected claims 1-82 is therefore requested.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: July 21, 2008

By:   
Donald R. Dunner  
Reg. No. 19073

## VIII. CLAIMS APPENDIX

1. An apparatus comprising:
  - a flexible substrate to which a plurality of light sources are fixed;
  - a flexible substrate housing in which the flexible substrate is located;
  - wherein the flexible substrate is comprised of a peripheral region and a center region;
  - and further comprising a flexing device for flexing the flexible substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;
  - and wherein in a first state when the flexible substrate is not deformed by the flexing device, each of the plurality of light sources emits light which is concentrated in a first direction;
  - and wherein in a second state when the flexible substrate has been deformed by the flexing device, at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction; and
  - wherein the flexible substrate housing is comprised of a removable holder and a case;
  - wherein the flexing device is comprised of the removable holder and the case;
  - and wherein the removable holder can be connected onto the case; and
  - and wherein the connecting of the removable holder onto the case can cause the flexible substrate to deform.
2. The apparatus of claim 1 and wherein the removable holder can be connected to the case by variably tightening the removable holder to the case to thereby apply a variable amount of pressure to the flexible substrate and a corresponding variable amount of deformation of the flexible substrate.
3. The apparatus of claim 1 and wherein the removable holder is in the form of a cover and the case is in the form of a flashlight case.
4. The apparatus of claim 2 wherein the removable holder when tightened causes the center region of the flexible substrate to be forced upwards by a surface of a battery.
5. The apparatus of claim 4 wherein the removable holder when screwed tightly causes the center region of the flexible substrate to be forced upwards by a terminal of a battery.

6. An apparatus comprising:  
a flexible substrate to which a plurality of light sources are fixed;  
a flexible substrate housing in which the flexible substrate is located;  
wherein the flexible substrate is comprised of a peripheral region and a center region;  
and further comprising a flexing device for flexing the substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;  
wherein in a first state when the flexible substrate is not deformed by the flexing device each of the plurality of light sources emits light which is concentrated in a first direction;  
wherein in a second state when the flexible substrate has been deformed by the flexing device at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction;  
and wherein the flexible substrate is comprised of a center electrical terminal located at the center region of the flexible substrate and wherein the flexing device makes electrical contact with the center electrical terminal of the flexible substrate when the flexing device applies pressure to the center region of the flexible substrate.
7. The apparatus of claim 6 wherein  
each light source on the flexible substrate has a first terminal and a second terminal,  
and each first and second terminal is electrically connected to its own first and second conductive material on the flexible substrate, respectively;  
wherein the first conductive materials for all the light sources are electrically connected to a center conductive material on the flexible substrate;  
wherein the second conductive materials for all the light sources are electrically connected to a peripheral conductive material on the flexible substrate;  
and wherein by applying a positive terminal of a signal source to the center conductive material and by applying a negative terminal of the signal source to the peripheral conductive material, the plurality of light sources can be turned on.
8. The apparatus of claim 6 wherein  
each light source on the flexible substrate has a first terminal and a second terminal,

and each first and second terminal is electrically connected to its own first and second conductive material on the flexible substrate, respectively;

wherein the first conductive materials for all the light sources are electrically connected to a center conductive material on the flexible substrate;

wherein the second conductive materials for all the light sources are electrically connected to its own separate distinct peripheral conductive material on the flexible substrate;

and wherein by applying a positive terminal of a signal source to the center conductive material and by applying a negative terminal of the signal source to the appropriate peripheral conductive material, a particular light source can be turned on.

9. The apparatus of claim 6 wherein the plurality of light sources are light emitting diodes.

10. An apparatus comprising:

a flexible substrate to which a plurality of light sources are fixed;

a flexible substrate housing in which the flexible substrate is located;

wherein the flexible substrate is comprised of a peripheral region and a center region;

and further comprising a flexing device for flexing the substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;

wherein the flexible substrate housing applies pressure to the peripheral region of the flexible substrate in a substantially opposite direction to the pressure being applied to the center region and while pressure is being applied to the center region of the flexible substrate;

and wherein in a first state when the flexible substrate is not deformed by the flexing device each of the plurality of light sources emits light which is concentrated in a first direction;

and wherein in a second state when the flexible substrate has been bent by the flexing device at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction; and

wherein the flexing device is comprised of a battery having a first terminal, wherein the first terminal of the battery applies pressure to the center region of the flexible substrate to cause the flexible substrate to deform.

11. An apparatus comprising:

a flexible substrate to which a plurality of light sources are fixed;  
a flexible substrate housing in which the flexible substrate is located;  
wherein the flexible substrate is comprised of a peripheral region and a center region;  
and further comprising a flexing device for flexing the substrate by applying pressure to the center region of the flexible substrate to cause the flexible substrate to deform;  
and wherein in a first state when the flexible substrate is not deformed by the flexing device, each of the plurality of light sources emits light which is concentrated in a first direction;  
and wherein in a second state when the flexible substrate has been bent by the flexing device at least one of the plurality of light sources emits light which is concentrated in a second direction which differs from the first direction;  
wherein each light source on the flexible substrate has a first terminal and a second terminal, each first and second terminal is electrically connected to its own first and second conductive material on the flexible substrate, respectively;  
wherein the first conductive materials for all the light sources are electrically connected to a center conductive material on the flexible substrate;  
wherein the second conductive materials for all the light sources are electrically connected to a peripheral conductive material on the flexible substrate;  
and wherein by applying a positive terminal of a signal source to the center conductive material and by applying a negative terminal of the signal source to the peripheral conductive material, the plurality of light sources can be turned on.

12. An apparatus comprising:

a flexible substrate to which a plurality of light sources are fixed;  
a flexible substrate housing in which the flexible substrate is located;  
wherein the flexible substrate is comprised of a first region and a second region;  
and further comprising a flexing device for flexing the substrate by applying pressure in a first direction to the second region of the flexible substrate and simultaneously applying pressure in a second direction to the first region of the flexible substrate, wherein the first direction is substantially opposite the second direction, to cause the flexible substrate to deform;  
and wherein in a first state when the flexible substrate is not deformed by the flexing device each of the plurality of light sources emits light which is concentrated in a third direction;

and wherein in a second state when the flexible substrate has been deformed by the flexing device at least one of the plurality of light sources emits light which is concentrated in a fourth direction which differs from the third direction; and

wherein the flexible substrate housing is comprised of a removable holder and a case;

wherein the flexing device is comprised of the removable holder and the case;

and wherein the removable holder can be connected to the case; and

and wherein the connecting of the removable holder onto the case can cause the flexible substrate to deform.

13. A lighting apparatus comprising:

a substrate;

a plurality of light emitting diodes;

a lamp driver circuit;

a communications component;

a first housing in which the substrate is located;

wherein the substrate has a first circuit and a second circuit;

wherein the lamp driver circuit is electrically connected to the first circuit and the second circuit;

wherein a first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can vary the intensity of the light emitted by the first portion of the plurality of light emitting diodes;

wherein a second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of the light emitted by the second portion of the plurality of light emitting diodes;

wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;

wherein the second color is generated by white light emitting diodes; and

wherein the communications component can receive a control command for varying either the intensity of the first portion of the plurality of light emitting diodes or the second



portion of the plurality of light emitting diodes to change the color temperature of the light emitted from the plurality of light emitting diodes.

14. The lighting apparatus of claim 13 wherein the first color is generated by yellow light emitting diodes.

15. The lighting apparatus of claim 13 wherein the first color is generated by amber light emitting diodes

16. The lighting apparatus of claim 13 wherein the first color is generated by any of red, blue or green light emitting diodes.

17. The lighting apparatus of claim 14 wherein varying the light intensity emitted by the first portion or the second portion of the plurality of light emitting diodes changes the color temperature of the light projected on to a surface.

18. The lighting apparatus of claim 15 wherein varying the light intensity emitted by the first portion or the second portion of the plurality of light emitting diodes changes the color temperature of the light projected on to a surface.

19. The lighting apparatus of claim 16 wherein varying the light intensity emitted by the first portion or the second portion of the plurality of light emitting diodes changes the color temperature of the light projected on to a surface.

20. The lighting apparatus of claim 13 further comprising a second housing; and an electrical component located within the second housing.

21. The lighting apparatus of claim 20 wherein the electrical component is a processor.

22. The lighting apparatus of claim 20 further comprising wherein the first housing can pan and tilt in relation to the second housing by a motor.

23. The lighting apparatus of claim 20 wherein a position of the first housing relative to the second housing is caused by remote control.
24. The lighting apparatus claim 20 further comprising a communications line and the communications line can provide a control signal.
25. The lighting apparatus of claim 13 further comprising ventilation holes; and wherein the ventilation holes are located in the substrate in proximity to any of the light emitting diodes of the first or second portions.
26. The lighting apparatus of claim 25 further comprising a fan; and wherein the fan forces air through the ventilation holes.
27. The lighting apparatus of claim 13 further comprising a variable filter.
28. The lighting apparatus of claim 27 wherein the variable filter is a liquid crystal emulsion filter.
29. The lighting apparatus of claim 28 wherein the variable filter is mounted to the first housing wherein each of the light emitting diodes of the first and second portions emit light in a direction passing through the filter.
30. The lighting apparatus of claim 29 wherein a control command can vary the optical state of the filter.
31. The lighting apparatus of claim 13 wherein the substrate is a flexible substrate.
32. The lighting apparatus of claim 31 wherein the substrate is a curved substrate.
33. A lighting apparatus for projecting light onto a surface comprising:

- a substrate;
- a first housing, in which the substrate is located;
- a plurality of light emitting diodes comprised of a first portion and a second portion each of the first and the second portion emitting light having an intensity;
- a variable filter;
- a lamp driver;
- a communications component;
- wherein the substrate has a first circuit and a second circuit;
- wherein the lamp driver is electrically connected to the first circuit and the second circuit;
- wherein the first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can vary the intensity of the light emitted by the first portion of the plurality of light emitting diodes;
- wherein the second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of the light emitted by the second portion of the plurality of light emitting diodes;
- wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;
- wherein the light emitted from the first portion and the second portion of the plurality of light emitting diodes is emitted through the variable filter; and
- wherein the communications component can receive a control command for varying control information to the variable filter.

34. The lighting apparatus of claim 33 wherein the variable filter is a liquid crystal filter.

35. A lighting apparatus for projecting light onto a surface comprising:

- a substrate;
- a communications component;
- first, second, third, fourth, fifth and sixth light emitting diodes each of which is fixed to the substrate;
- a first housing wherein the substrate is located;

wherein each of the first, second, third, fourth, fifth and sixth light emitting diodes emits light having an intensity;

wherein the substrate has first, second, third, fourth, fifth and sixth circuits;

wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;

wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;

wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;

wherein the fourth light emitting diode is connected to the fourth circuit and the fourth circuit can vary the intensity of light emitted by the fourth light emitting diode;

wherein the fifth light emitting diode is connected to the fifth circuit and the fifth circuit can vary the intensity of light emitted by the fifth light emitting diode;

wherein the sixth light emitting diode is connected to the sixth circuit and the sixth circuit can vary the intensity of light emitted by the sixth light emitting diode;

wherein each of the intensities of light of the first, second, third, fourth, fifth and six light emitting diodes can be varied independently of each of the other intensities of light of the first, second, third, fourth, fifth, and sixth light emitting diodes;

wherein the first, second, third, fourth, fifth and sixth light emitting diodes emit light of first, second, third, fourth, fifth and sixth wavelengths, respectively;

and wherein the communications component can receive a control command for varying each of the intensities of light of the first, second, third, fourth, fifth and sixth light emitting diodes.

36. The lighting apparatus of claim 35 wherein

the first light emitting diode emits light of a first color;

the second light emitting diode emits light of a second color;

the third light emitting diode emits light of a third color; and

the fourth light emitting diode emits light of a fourth color;

the fifth light emitting diode emits light of a fifth color;

the sixth light emitting diode emits light of a sixth color;

and wherein the first, second, third, fourth, fifth and sixth colors are different.

37. The lighting apparatus of claim 35 further comprising a second housing; and an electrical component which is located within the second housing.

38. The lighting apparatus of claim 37 wherein the electrical component is a battery.

39. The lighting apparatus of claim 37 wherein the first housing can pan and tilt in relation to the second housing by a motor.

40. The lighting apparatus of claim 39 wherein the rotation of the first housing relative to the second housing is caused by remote control.

41. The lighting apparatus claim 40 wherein a communications line is connected to the second housing.

42. The lighting apparatus of claim 35 further comprising ventilation holes and the ventilation holes are located in the substrate in proximity to any of the first, second, third, fourth, fifth or sixth light emitting diodes.

43. The lighting apparatus of claim 42 further comprising a fan; wherein the fan forces air through the ventilation holes.

44. The lighting apparatus of claim 35 further comprising a variable filter.

45. The lighting apparatus of claim 44 wherein the variable filter is a liquid crystal emulsion filter.

46. The lighting apparatus of claim 44 wherein the first, second, third, fourth, fifth and sixth light emitting diodes emit light in a direction passing through the filter.

47. The lighting apparatus of claim 44 further including a communications line and wherein the variable filter can be varied by communications received over the communications line.
48. The lighting apparatus of claim 35 wherein the substrate is a flexible substrate.
49. The lighting apparatus of claim 35 wherein the substrate is a curved substrate
50. A lighting apparatus for projecting light onto a surface comprising:  
a substrate;  
first, second, third, fourth, fifth and sixth light emitting diodes, each of which is fixed to the substrate;  
a first housing in which the substrate is located;  
a communications component;  
wherein each of the first, second, third, fourth, fifth and sixth light emitting diodes emit light having an intensity;  
wherein the substrate has first, second, third, fourth, fifth and sixth circuits;  
wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;  
wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;  
wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;  
wherein the fourth light emitting diode is connected to the fourth circuit and the fourth circuit can vary the intensity of light emitted by the fourth light emitting diode;  
wherein the fifth light emitting diode is connected to the fifth circuit and the fifth circuit can vary the intensity of light emitted by the fifth light emitting diode;  
wherein the sixth light emitting diode is connected to the sixth circuit and the sixth circuit can vary the intensity of light emitted by the sixth light emitting diode;  
wherein each of the light intensities of the first, second, third, fourth, fifth and six light emitting diodes can be varied independently of each of the other light intensities of the first, second, third, fourth, fifth, and sixth light emitting diodes;

and wherein the first, second, third, fourth, fifth and sixth light emitting diodes all emit light of a first color; and

wherein the communications component can receive a control command for varying each of the light intensities of each of the first, second, third, fourth, fifth and sixth light emitting diodes.

51. The lighting apparatus of claim 50 further comprising  
a seventh light emitting diode which emits light having an intensity;  
wherein the substrate has a seventh circuit;  
wherein the seventh light emitting diode is connected to the seventh circuit;  
wherein the seventh circuit can vary the intensity of light emitted by the seventh light emitting diode;

and wherein the seventh light emitting diode emits light of a second color different than the first color.

52. The lighting apparatus of claim 50 wherein the first color is white.

53. The lighting apparatus of claim 51 wherein the second color is amber.

54. The lighting apparatus of claim 51 wherein the second color is yellow

55. The lighting apparatus of claim 51 wherein the second color is red.

56. The lighting apparatus of claim 51 wherein the intensity of the first color is varied to change the color temperature of the light projected onto the surface by the lighting apparatus.

57. The lighting apparatus of claim 51 wherein the intensity of the second color is varied to change the color temperature of the light projected onto the surface by the lighting apparatus.

58. The lighting apparatus of claim 50 further comprising a second housing; and an electrical component located within the second housing.

59. The lighting apparatus of claim 58 wherein the electrical component is a battery.
60. The lighting apparatus of claim 58 wherein the first housing can pan and tilt in relation to the second housing by a motor.
61. The lighting apparatus of claim 60 wherein the rotation of the first housing relative to the second housing is caused by remote control.
62. The lighting apparatus of claim 61 wherein a communications line is connected to the second housing.
63. The lighting apparatus of claim 50 further comprising ventilation holes and the ventilation holes are located in the substrate in proximity to any of the first, second, third, fourth, fifth, or sixth light emitting diodes.
64. The lighting apparatus of claim 63 further comprising a fan; and wherein the fan forces air through the ventilation holes.
65. The lighting apparatus of claim 50 further comprising a variable filter.
66. The lighting apparatus of claim 65 wherein the variable filter is a liquid crystal emulsion filter.
67. The lighting apparatus of claim 65 wherein any of the first, second, third, fourth, fifth or sixth light emitting diodes emit light in a direction passing through the filter.
68. The lighting apparatus of claim 65 further including a communications line and wherein the variable filter can be varied by communications received over the communications line.
69. The lighting apparatus of claim 50 wherein the substrate is a flexible substrate.



70. The lighting apparatus of claim 50 wherein the substrate is a curved substrate
71. The lighting apparatus of claim 50 wherein the first color is ultraviolet.
72. The lighting apparatus of claim 51 wherein the second color is ultraviolet.
73. A lighting device for projecting light onto a surface comprising:  
a first housing;  
the first housing comprising a substrate and a plurality of light emitting diodes;  
wherein the substrate has a first circuit and a second circuit;  
wherein a first portion of the plurality of light emitting diodes are connected to the first circuit and the first circuit can vary the intensity of light emitted by the first portion of the plurality of light emitting diodes;  
wherein a second portion of the plurality of light emitting diodes are connected to the second circuit and the second circuit can vary the intensity of light emitted by the second portion of the plurality of light emitting diodes;  
wherein the first portion of the plurality of light emitting diodes emits light of a first color and the second portion of the plurality of light emitting diodes emits light of a second color different from the first color;  
wherein the plurality of light emitting diodes have respective directions of light energy emission;  
a second housing; and  
a power applying component disposed in the second housing;  
wherein the power applying component is electrically coupled to the light emitting diodes for applying power to the light emitting diodes; and  
wherein the first housing is rotationally mounted to the second housing for revolving the first housing relative to the second housing to vary the direction of light energy emission relative to the second housing.
74. The lighting device of claim 73 further comprising a flexible substrate, wherein:

the first housing comprises a threaded holder;  
the light emitting diodes are mounted on the flexible substrate;  
the flexible substrate is mounted in the threaded holder;  
the second housing comprises a threaded case;  
the power applying component comprises a battery; and  
the threaded holder engages the threaded case and is manually rotatable relative to the case for varying the basic directions of light energy emission relative to the case by deformation of the flexible substrate.

75. The lighting device of claim 73 further comprising  
a flexible substrate and an actuator coupled to the flexible substrate, wherein:  
the first housing comprises a lamp housing;  
the light emitting diodes are mounted on the flexible substrate;  
the flexible substrate is mounted in the lamp housing;  
the second housing comprises an electronics housing;  
the power applying component comprises an internal power supply; and  
the actuator is controllable for varying the basic directions of light energy emission relative to the electronics housing by deformation of the flexible substrate.

76. The lighting device of claim 73 further comprising  
a yoke, wherein the yoke is mounted for rotation to the first housing;  
wherein the first housing comprises a lamp housing;  
wherein the yoke is mounted for rotation to the second housing;  
wherein the first housing is rotated in relation to the second housing by a motor;  
wherein the second housing comprises an electronics housing; and  
the power applying component comprises an internal power supply;

77. The lighting device of claim 76 further comprising a communications line and the communications line is connected to the second housing.

78. An apparatus comprising:

a housing;

a substrate disposed in the housing, the substrate having a plurality of individually controllable circuits; and

first, second, third, fourth, and fifth light emitting diodes respectively fixed to the circuits of the substrate for directing light from the housing;

wherein the first, second, third, fourth, and fifth light emitting diodes have respectively independently variable light intensities;

wherein the first, second, third, fourth, and fifth light emitting diodes emit light of first, second, third, fourth, and fifth wavelengths, respectively; and

wherein the first, second, third, fourth, and fifth wavelengths produce respectively different colors.

79. A lighting apparatus for projecting light onto a surface comprising:

a substrate;

a first housing in which the substrate is located;

a second housing:

a yoke;

a first, a second and a third light emitting diode, each of which is fixed to the substrate;

a communications component;

wherein each of the first, second and third light emitting diodes emits light having an intensity;

wherein the substrate has first, second, and third circuits;

wherein the first light emitting diode is connected to the first circuit and the first circuit can vary the intensity of light emitted by the first light emitting diode;

wherein the second light emitting diode is connected to the second circuit and the second circuit can vary the intensity of light emitted by the second light emitting diode;

wherein the third light emitting diode is connected to the third circuit and the third circuit can vary the intensity of light emitted by the third light emitting diode;

wherein each of the light intensities of the first, second and third light emitting diodes can be varied independently of each of the other light intensities of the first, second, and third light emitting diodes;

wherein the first light emitting diode emits light of a first color;  
wherein the second light emitting diode all emits light of a second color;  
wherein the third light emitting diode emits light of a third color;  
wherein the communications component can receive a control command for varying either any of the light intensities of the first, second, and third light emitting diodes;  
and wherein the first housing can be positioned in relation to the second housing by remote control.

80. The lighting apparatus of claim 79 wherein the first color is green, the second color is red and the third color is blue.

81. The lighting apparatus of claim 79 wherein the remote control of the first housing in relation to the second housing is obtained by a motor.

82. The lighting apparatus of claim 79 wherein at least one of the first, second or third colors is a white color.

## **IX. EVIDENCE APPENDIX**

Appellant is not relying on any evidence submitted by appellant pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or submitted by Examiner Lee.